IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11090 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SURESHBHAI DALSUKH SHRIMALI

Appearance:

1. Special Civil Application No. 11090 of 2002

Mr. MR Mengde, AGP for Petitioner No. 1-2

MR HJ NANAVATI for Respondent No. 1

RULE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 15/11/2003

ORAL JUDGEMENT

Heard learned AGP Mr. Mengde for the petitioner

and Mr. H.J. Nanavati for the respondent No.1/teacher. The facts of the present petition, in short, are to the effect that the present petitioner imposed a condition on respondent no.2 school to absorb the surplus teacher on the newly created post on account of creation of an additional class in Std. IX which was approved by the petitioner on the said condition. Despite such condition imposed by the petitioner no.1 while granting approval for Std. 9, the respondent No.2 School made appointment of the respondent no.1 as a teacher who was admittedly not a surplus teacher and, therefore, the petitioner has not accorded approval for the said appointment and being aggrieved by the said action on the part of the authorities, the respondent no.1 teacher approached the Gujarat Secondary Education Tribunal by filing an application no. 326 of 2000 which was allowed by the said Tribunal and, therefore, feeling aggrieved by the order of the tribunal, the petitioners have filed the present petition before this Court.

Mr. Mengde appearing for the petitioners has submitted that once the approval for Std. 9 has been issued by the District Education Officer ("DEO" for short) subject to the condition that the school management has to fill up the newly created post by making appointment of the surplus teacher, then, such direct selection by constituting the selection committee is not permissible and therefore appointment of respondent no. 1 without approval being illegal and contrary to law, the order of the tribunal is required to be quashed and set aside. According to his submissions, these facts were brought to the tribunal's notice by the DEO but the same have not been properly appreciated by the tribunal in their proper perspective and, therefore also, present petition is required to be allowed.

On the other hand, learned advocate Mr. H.J. Nanavati for the respondent no.1 teacher has submitted that initially approval was granted by the DEO on 4th September, 1996 on a condition to absorb the surplus teacher on the newly created post in Std. 9 but thereafter, subsequently, the DEO has granted another No Objection Certificate on 4th July, 1997 wherein no such condition has been incorporated by the DEO. He also pointed out that there was no surplus teacher available in the subject of the respondent no.1 and, therefore, there was no substance in the objections subsequently raised by the DEO for not according approval to the appointment of the respondent no. 1 which was made pursuant to the NOC dated 4th July, 1997 by following the procedure. He also pointed out that once, if it is the

case of the DEO that the permission was granted subject to condition to absorb surplus teacher, then, why in selection committee member was sent as his representative by the DEO because once, when the surplus teacher is required to be absorbed, then, as such, there is no need to constitute the selection committee under the Act. He also pointed out that the NOC dated 4.7.1997 granted by the DEO was also subject to various terms and conditions incorporated in the said order. With such conditions, said NOC was given. He also submitted that after considering all the aspects, NOC dated 4.7.1997 was given by the DEO and thereafter, recruitment of respondent no.1 was made by the selection committee duly constituted in accordance with law and, therefore, the present respondents were not justified in not according sanction/approval to the appointment of respondent No.1. He also submitted that all these aspects were considered by the tribunal before passing the order and the tribunal has not committed any error in passing the order in question and, therefore, this petition is required to be dismissed.

I have considered the submissions made by the learned advocates for the parties. I have also perused minutely the order passed by the tribunal. The facts are in narrow compass. The question is that the first respondent approached the tribunal by filing the aforesaid application on the ground that his salary is not being paid by the other respondents and the petitioners under the Direct Payment Scheme on the ground that his appointment is not approved by the DEO. This aspect has been examined by the tribunal. The Trust is running TS Patel High School at Naroda Ahmedabad which is a registered private secondary school fully aided by the Government. As per the facts of the case, in view of the addition of one class in Std. 9, post of assistant teacher happened due for which the DEO issued NOC for he appointment of the teacher subject to the terms and conditions of the said NOC permitting the school to recruit the teacher. Thereafter, a public advertisement was given in Jansatta News Paper on 6.7.87 inviting applications as per the qualified SC Candidates. Interviews were held on 8.10.1998 by the selection committee duly constituted as per rules consisting of the following members:

1. Patel Tulsibhai Shivabhai, Representative for the Management.
2. Patel Dahyabhai Shivabhai, Representative for the Management.
3. Patel Jashubhai T.

4. Patel Narenbhai Mavjibhai, Representative for the Board.

Aforesaid selection committee consisting of four members selected the respondent no.1 and thereafter appointment order was issued on 10th October, 1998. A proposal was made for approval of his appointment by the respondent school before the DEO on 4th November, 1998 but no decision has been taken by the DEO on such proposal and in view of that, it was not possible to make payment of the salary to the first respondent under the Direct Payment Scheme and, therefore, the respondent no.1 filed the aforesaid application before the tribunal.

Before the tribunal, the DEO raised two objections. One is to the effect that while approving one additional class in Std. 9, by letter dated 4th September, 1996, the DEO informed the school that the said sanction of the additional class in Std.9 was on a condition that the post of assistant teacher is to be filled up by absorbing surplus teacher. By letter dated 22nd July, 1999, the school was informed that since the school has not absorbed surplus teacher, approval cannot be given to the appointment of respondent no.1 teacher.

On the basis of these facts, it was observed by the Tribunal that from the facts which have been narrated by the applicant/respondent no.1, that all the relevant formalities for appointment is followed by the school and there is no objection raised by the department with regard to the validity of the selection procedure. The tribunal observed that the representative of the Board was present in the selection committee; the remarks of the DEO are confusing; the remarks are indicating that an additional class was subject to the condition of absorbing a surplus teacher. In that regard, it was observed that if that was so and such a condition was incorporated in the order dated 4.9.96, then, the question remains as to how and why the DEO has issued the NOC subsequently on 4.7.1997 ? It was also observed by the tribunal that the remarks further indicate that as on today, there was no surplus candidate in the subject of respondent no.1 and in that view of the matter, it was held by the tribunal that there is no any substance in the objections raised by the DEO. From the order of the tribunal, it appears that the DEO has not made explanation as to why the approval has been given on 4th July, 1997 without any condition. That part has remained unanswered before the Tribunal. Before this Court, learned AGP appearing for the petitioners were unable to answer that part of the matter. In view of all these

factual aspects, ultimately, the decision taken by the DEO on 22nd July, 1999 for not according approval to the appointment of respondent no.1 was not found to be legal and valid. The case is very much clear that once by order dated 4.9.1996, one additional class in Std.9 has been permitted by the DEO on condition that a surplus teacher should be absorbed on the newly created post in Std.9. But thereafter, the DEO has granted NOC without any such condition. I have also perused the NOC dated 4.7.1997 which is subject to various conditions. Condition NO.2 of the said order provides that if the surplus candidate in the subject would appear in the interview, then, he should be given the first priority and condition No.9 thereof provides that if the surplus assistant teacher is allotted by the office of the DEO prior to the recruitment, then, he shall be absorbed. As regards those two conditions, learned AGP appearing for the petitioner has not been able to point out that such surplus candidate, though available, was not given first priority or preference. It is also not his case that before recruitment, any surplus assistant teacher was allotted by the office of the DEO but he was not absorbed by the school as per condition no. 9 of the order. It was not the case of the DEO even before the Tribunal. Therefore, when there was no any surplus candidate in the subject of respondent no.1, relying upon the second NOC given by the DEO which was issued by the DEO subsequent to the permission dated 4th Sept. 1996, the Management got published the advertisement for the post in question, constituted selection and thereafter, interviews of the candidates were held wherein the respondent no.1 was selected and, therefore, in view of these facts, according to my opinion, the DEO was not justified in changing his stand and, therefore, the tribunal was justified in passing the order in question.

I have perused the order made by the tribunal. Considering the observations made by the tribunal on the basis of the facts on record, considering the no explanation from the DEO about the issuance of the NOC dated 4th July, 1997 which was acted upon by the school management, according to my opinion, the tribunal has rightly passed the order in question and has not committed any error and the order of the tribunal would require no interference in exercise of the extra ordinary jurisdiction under Article 227 of the Constitution of India. If the matter is considered from the another angle, then, what is the fault on the part of the respondent No.1 ? He applied in response to the advertisement issued by the respondent no.2 school. He was interviewed by the selection committee consisting of

the aforesaid four members which includes the representatives of the Board and was selected by the said selection committee and thereafter, he was appointed by the school. In view of that, non grant of approval to his appointment by the DEO has adversely affected respondent no.1 and such an act on the part of petitioners is not proper. Therefore, according to my opinion, there is no slightest error committed by the tribunal. On the contrary, the order of the tribunal is just, legal and proper and therefore, it would not require any interference of this court in a petition under Article 227 of the Constitution of India. Even otherwise, learned AGP appearing for the petitioners has not been able to point out any jurisdictional error or irregularity in the order in question. Therefore, there is no any substance in this petition and the same is required to be dismissed.

In the result, this petition is dismissed. Rule is discharged. Interim relief, if any, shall stand vacated. No Costs.

Dt. 15.11.2003 (HK Rathod,J.)

Vyas